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IN THE HIGH COURT OF SIKKIM

Criminal Appeal No.7 of 2003

Jivalall Sharma
S/O Late Srilal Sharma,
R/O Aho Yangtham,
P.S. Pakyong,
East Sikkim. ..... ***Appellant.***

Versus

State of Sikkim ..... ***Respondent.***

Coram : Hon'ble Shri Justice N. Surjamani Singh, Judge.

Present : Mr. N. B. Kharga, learned Counsel assisted by Miss Sapna Rai, learned Counsel for the appellant.

Mr. J. B. Pradhan, learned Public Prosecutor for the State/respondent.

Date of Hearing : 9th March, 2004.

Date of Decision : 9th March, 2004.

JUDGMENT

Singh, J.

Heard Mr. N. B. Kharga, assisted by Miss Sapna Rai, learned Counsel for the accused/appellant and Mr. J. B. Pradhan, learned Public Prosecutor for the State/respondent.

2. The judgment dated 28.5.2003 passed by the learned Special Judge, Prevention of Corruption Act, (East and North) Sikkim at Gangtok in Criminal Case No.1 of 2000 is the subject matter under

challenge in this appeal. The facts of the case in a short compass are as follows :-

> The accused, namely, Shri Jivalall Sharma (Ghimiray), member of Gram Panchayat (Aho Yangtam Unit), he being a public servant, received illegal gratification from 6 persons namely, Gorey Limbu, Man Bahadur Subba, Karna Singh Subba, Karbir Subba, Sancharaj Subba and Birman Subba to the tune of Rs.5,000/-, Rs.5,000/-, Rs.5,000/-, Rs.5,000/-, Rs.5000/-, Rs.2,200/- and Rs.500/- respectively as a motive or reward for helping them to receive the grant of Rs.20,000/- by each of the said 6 villagers and that being the position, he has committed offence punishable under section 7 of the Prevention of Corruption Act, 1988 for short, Act of 1988. This is the prosecution case.

3. The accused was tried by the learned Special Judge, the learned Court below, for committing offence punishable under section 7 of the Act of 1988 and learned trial Court found the accused/appellant guilty of the offence punishable under section 7 of the Act of 1988 and convicted and sentenced the accused/appellant to undergo simple imprisonment for 6 months with a fine of Rs.5000/- under the impugned judgment and related order of sentence dated 29.5.2003. Being aggrieved by the impugned judgment, the accused/appellant preferred this appeal.

4. Supporting the case of the accused/appellant Mr. N. B. Kharga, learned Counsel contended that the accused/appellant was once served the charge sheet for committing the offence punishable under section 161 IPC and the learned Chief Judicial Magistrate, East and North took cognizance of the offence on 10.5.1999, but the accused/appellant was discharged by the learned Chief Judicial Magistrate, East and North on 28.7.1999, thus dismissing the case. At this stage, Mr. Kharga, learned Counsel has drawn my attention to the evidence/statement of PW No.10, namely, P.I. Shri Rapden Bhutia, I.O. of the case. According to Mr. Kharga, learned Counsel, no prosecution sanction

as required under section 19 of the Act of 1988 was obtained by the authority concerned for prosecution of the accused/appellant for committing the offence punishable under section 7 of the Act of 1988 and in view of it, the entire proceedings and prosecution of the accused/appellant is not tenable in the eye of law. It is also argued that there is no evidence on record for establishing the factum of previous sanction for prosecution of the accused for committing the offence punishable under section 7 of the Act of 1988. On this ground alone, the accused/appellant deserves clean acquittal. Mr. Kharga, learned Counsel argued.

5. At the hearing, Mr. J. B. Pradhan, learned Public Prosecutor contended that the prosecution witness No.11, namely, Shri K. N. Lepcha, the Director Panchayat, Government of Sikkim specifically stated that requisition was received from one Rapden Bhutia, Police Inspector of Pakyong Police Station seeking sanction for prosecution of the accused/appellant under section 7 of the Act of 1988 and, accordingly, file was processed for seeking the sanction of the Government to initiate prosecution against the accused as requested by the Pakyong Police Station and Government accordingly accorded the sanction to prosecute the accused. At this stage, the learned Public Prosecutor has drawn my attention to the evidence of the prosecution, PW-11. I have perused it. According to Mr. Pradhan, learned Public Prosecutor, there is no infirmity in the impugned judgment and order of sentence, as the prosecution witness No.11 specifically stated that the Government had accorded the prosecution sanction for prosecution of the accused for committing offence punishable under section 7 of the Act of 1988.

6. Now, this Court is to see and examine as to whether there is infirmity or illegality in the impugned judgment and related order of sentence passed by the learned Court below and whether, there is/was previous sanction of the competent authority for prosecution of the accused/appellant as required under the related provisions of the Act of 1988 or not ?

7. I have perused the impugned judgment and the related order of sentence and also the available materials on record and particularly the file bearing No.35(62)88-89/RDD-P/E. pertaining to initiation of criminal proceedings against the accused/appellant and the prosecution sanction as required under the Act of 1988.

8. On bare perusal of the nature of the case as highlighted above, I am of the view that previous sanction of the competent authority for prosecution of the accused/appellant under section 7 of the Act of 1988 is necessary in the instant case in terms of Section 19 of the Act of 1988, inasmuch as, the present case involves taking of gratification from the above mentioned 6 persons/villagers by the accused/appellant while he was serving as member of Gram Panchayat (Aho Yangtham Unit). The related file No.35(62)88-89/RDD-P/E. established the fact that the Police Inspector of Pakyong Sub Division sought for permission to proceed further for prosecution of the accused/appellant under the related Act as the criminal case filed earlier under section 161 IPC has been repealed, and that being the position, the authority sought for clearance of the competent authority and the matter was submitted for approval by the concerned authority on 20.9.1999, and thereafter, the Chief Secretary, Government of Sikkim approved the matter on 27.10.1999. The original file further shows that the related order of sanction was issued on 24.11.1999 vide, the related note sheet/order signed by the authority on 24.11.199. On further perusal of the available materials on record, it is revealed that on 24.11.1999, the Director Panchayat, namely Shri K. N. Lepcha, PW No.11 himself issued the related order conveying and informing Shri Rapden Bhutia, Police Inspector, Officer-in-charge, Pakyong Police Station, Pakyong, East Sikkim that the State Government has approved filing of charge sheet against Shri Jivalall Sharma, the present accused/appellant. This official letter is relevant and necessary for just determination of the real points in controversy between the parties and accordingly, it is quoted below :-

"**GOVERNMENT OF SIKKIM**
RURAL DEVELOPMENT DEPARTMENT
Tashiling, Gangtok.

No.35(62)88-89/RDD/P-E/99 Dated 24.11.99

To

Shri Rabden Bhutia,
Police Inspector,
Officer-In-Charge,
Pakyong Police Station,
Pakyong, East Sikkim.

This has reference to Pakyong P.S. case No-10(12)98 under section 161 IPC for filing chargesheet against Shri Jivalall Sharma, (Ghimirey), member of Aho Yangtam Gram Panchayat Unit, East Sikkim.

I am to convey to you that the State Government has approved filing of chargesheet against Shri Jivalall Sharma.

Sd/-
(K. N. Lepcha)
DIRECTOR (PANCHAYAT)"

9. The above office letter dated 24.11.1999 clearly shows that it has reference to Pakyong Police Station case No.10(12)1998 under section 161 IPC for filing charge sheet against the accused/appellant, a member of Aho Yangtham Unit, East Sikkim. This is the only available material on record for showing the factum of approval of the prosecution sanction against the accused/appellant under section 161 IPC but not prior/previous sanction for prosecution of the accused/appellant as required under section 19 of the Act of 1988. I am of the view that the prosecution could not produce any related order pertaining to the previous sanction which is necessary for prosecution of the accused/appellant for committing the offence punishable under section 7 of the Act of 1988 as required under section 19 of the Act of 1988 before the learned Court below. As discussed above, previous sanction for prosecution is a must for taking cognizance of an offence punishable under section 7 of the Act of 1988. This Court need not go more into depth, as suffice is made with the above discussions and observations to come to the conclusion that there was no previous sanction for prosecution of the

accused/appellant as required under the Act of 1988. Therefore, I am of the view that the entire criminal proceeding against the accused/appellant before the court below is null and void for want of previous sanction.

10. For the reasons, observations and discussions made above, I am also of the view that the accused/appellant could make out a case to justify interference with the impugned judgment dated 28.5.2003 and order of sentence dated 29.5.2003 passed by the learned Special Judge, P.C.Act (East and North) Sikkim at Gangtok in Criminal Case No.1 of 2000, and accordingly, the impugned judgment and order of sentence are hereby quashed, thus acquitting the accused/appellant from the case.

11. In the result, the appeal is allowed, but no order as to costs. The Registry is directed to transmit the related case records to the learned Court below.

(N. Surjamani Singh)
Judge
09.03.2004